

APPENDIX A:
CORRESPONDENCE FROM
DE SHPO

State of Delaware
Historical and Cultural Affairs

21 The Green
Dover, DE 19901-3611

Phone: (302) 736.7400

Fax: (302) 739.5660

RECEIVED

February 14, 2007

FEB 26 2007

Mr. Robert Kleinburd
Division Program Manager
Federal Highway Administration
J. Allen Frear Federal Building
300 South New Street
Dover, DE 19904-6726

RUMMEL, KLEPPER & KAHL, LLP

RE: US 301 Corridor Study/Project Development; Draft Environmental Impact Statement

Dear Mr. Kleinburd:

Thank you for the opportunity to comment on the US 301 Draft Environmental Impact Statement (DEIS), prepared for compliance with the National Environmental Policy Act. The DEIS describes DelDOT's detailed analysis of those alternatives retained for further study (Yellow, Purple, Brown North, Brown South, Green North, and Green South), and identifies Green North as the "Recommended Preferred Alternative". The staff of the DE SHPO offers its comments on the analyses performed to date, including steps taken to comply with Section 106 of the National Historic Preservation Act, and the Alternatives' relative potential effects on historic properties.

Under separate cover, this office is also providing technical comments on the DEIS. However, one technical comment bears mentioning in this letter. The Summary, Chapter III (Environmental Resources and Consequences), and Chapter V (Recommended Preferred Alternative) contain inconsistent information on the number of historic properties that may be affected by the Alternatives. The inconsistency is significant, as some of the figures given suggest that the preferred Green North alternative would affect fewer properties than may actually be the case. Please ensure that correct information is given in the Final EIS, and, in the interim, is provided to any members of the public who inquire about this aspect of the DEIS.

Analyses Performed/Section 106 Process:

The Federal Highway Administration (FHWA) and DelDOT reinitiated Section 106 consultation on the US 301 project in February 2005, and began the process of re-defining an Area of Potential Effect and identifying and evaluating historic properties. Earlier studies, performed by the University of Delaware (the Center for Historic Architecture and Engineering and the Center for Archaeological Research, 1993) were consulted, but new survey of architectural properties and studies of archaeological potential were warranted.



Survey of those buildings, structures, and historic cemeteries that are likely to be affected by the Alternatives has been completed; DelDOT and DE SHPO staff have reached consensus on these resources' eligibility for listing in the National Register of Historic Places. As the project design progresses, FHWA, DelDOT and SHPO should consult further to determine if additional resources fall within the Area of Potential Effect (APE) and need to be evaluated.

The DEIS characterizes the general types of effects that the Alternatives may impose on historic properties in the study area. However, currently, our agencies are consulting to formally apply the Section 106 Criteria of Adverse Effects to historic properties in the APE of the Recommended Preferred Alternative (Green North). The assessment will need to be documented in accordance with the regulations implementing Section 106 (36 CFR Part 800.11). Since adverse effects are anticipated, FHWA must notify and invite the Advisory Council on Historic Preservation to participate in the consultation.

To date, no local governments, preservation organizations, Indian Tribes or individuals have requested to participate in the Section 106 process as formal consulting parties. Nevertheless, this office recommends that FHWA and DelDOT again contact such entities, and offer them an opportunity to participate in the resolution of adverse effects. In particular, the New Castle County historic preservation planner, and owners of affected historic properties should be invited to consult on measures to avoid, minimize and/or mitigate adverse effects. Such measures will be stipulated in a Memorandum of Agreement (MOA).

DelDOT's consultant also prepared models for predicting areas with a higher probability to contain archaeological sites. These models provide a means of comparing the alternatives at a very gross scale, as presented in the DEIS' impact matrices. For the selected alternative, the MOA should stipulate the process by which FHWA, DelDOT and DE SHPO will consult on the appropriate level of work to identify and evaluate archaeological sites, assess effects on National Register eligible sites, and determine ways to avoid, minimize, and/or mitigate for adverse effects. All aspects of the construction – the alignment proper, service roads, stormwater management facilities, wetland mitigation facilities, stockpile and staging areas, etc., – should be considered.

Other Analyses Performed:

Of the numerous other analyses discussed in the DEIS, the following have particular bearing on the project's potential effects to historic properties: Visual and Aesthetic Characteristics; Air Quality; Noise; and Secondary and Cumulative Effects. This office asks that the following issues be addressed in both the Final EIS and the Section 106 Assessment of Effects:

- The section on Visual and Aesthetic Characteristics should discuss the height, spacing, direction and intensity of lighting on the new facility; these factors can exacerbate the highway's visual effects, particularly at toll plazas and interchanges.

- Negative changes in Air Quality can be viewed as an atmospheric effect, listed among the examples of adverse effects in the Section 106 regulations. Data in the DEIS indicate that some degradation of air quality will likely occur at the Rosedale and Maples historic properties, if the preferred alternative (or any "ridge" alignment) is built.
- Noise, or audible effects, is also listed among the examples of adverse effects. The DEIS indicates that several National Register-listed or eligible properties -- as grouped with other types of properties in "Noise Sensitive Areas" -- may be adversely affected by the introduction of highway noise, but states that mitigation is not feasible or not reasonable to undertake. Under Section 106, further consultation on noise effects to historic properties, specifically, and exploration of ways to minimize or mitigate for those effects is needed. Additionally, the analysis projects that noise levels under some Build alternatives would *decrease* over the current ambient/peak hour and/or the projected No Build noise levels at some historic properties (The Maples, for example); the Final EIS and Section 106 Assessment of Effects should include explanation of these results.
- The Section 106 Criteria of Adverse Effect include "reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative", similar to the definition of Secondary and Cumulative Effects given in the DEIS. The DEIS acknowledges that the project has the potential to result in secondary and cumulative effects, but relies on County ordinances, State land use guidance, and Section 106 regulations to address these effects (please see further discussion in the technical comments). This office suggests that FHWA and DelDOT continue to seek ways that the design of the facility itself could discourage such effects; a study of the actual secondary and cumulative effects of SR 1, a similar, large scale limited access highway that is now completed, might prove instructive.

Alternatives' and Options' Potential Effects on Historic Properties

The DE SHPO's views on the alternatives are similar to those expressed in October, 2005. With the exception of "No Build", all of the Alternatives presented to date are likely to adversely affect historic properties. The "Build" Alternatives, and various new Options associated with certain alternatives, can be characterized by their relative degree and nature of potential effects.

The Yellow, Purple and Green Alternatives all affect a higher number of known National Register listed or eligible properties than would the Brown Alternatives. Further, the Yellow Alternative would result in physical impacts to four historic properties. The effects of the alternatives on areas with a higher probability to contain archaeological sites is mixed, with Yellow and Purple less likely to affect pre-contact period Native American sites, but more likely to affect historic period sites; the reverse is the case for the Green and Brown alternatives.

As discussed by DE SHPO staff at resource agency meetings, this office remains concerned with DelDOT's addition of the north-south "Spur Road" to the Green and Purple Alternatives. The inclusion of this additional facility contributes to the higher number of affected historic properties on these routes. Functionally, the Brown Alternatives appear to achieve similar movement of traffic, but with fewer affected historic properties. The design of the two-lane Spur Road, depicted as a corridor nearly as wide as, and with the same 70 mph design speed as the mainline facility, seems out of proportion with the percentage of traffic it may carry, particularly as existing Route 301 will remain in service. As indicated in the DEIS, the addition of the Spur Road was also of significant concern to some members of the public.

If the issues with the Brown Alternatives cannot be overcome (as stated in the DEIS), and FHWA and DelDOT continue to view Green North as the preferred alternative, this office requests further consideration of the purpose, need, and design of the Spur Road.

Several other Options that have been discussed would vary in the degree of potential effects on historic properties, as follows:


- Armstrong Corner Road Interchange (Green and Purple alternatives): All options would have adverse visual and noise effects on the Holton Farm, common to all of the "ridge" Alternatives. Option 1 would be furthest from, with a lesser degree of potential visual and/or noise effects to the Armstrong-Walker House. DelDOT's preferred Option 2a, while not as impactful to Armstrong-Walker as Options 2 and 3, would affect areas with higher probability to contain archaeological sites, as indicated by the predictive model.
- Boyd's Corner Road Interchange (Yellow and Purple alternatives): All Options would likely adversely affect the Shallcross House, though the degree of those effects may be more significant with Options 2 and 3.
- Boyds's Corner Road/Ratlidge Road Crossing (Green North alternative): As discussed at the February 8, 2007, resource agency meeting, DelDOT's ongoing consultation with the local community and the natural resource agencies has resulted in consideration of additional Options for this crossing. The new Option 4B Modified appears to balance the community and natural resource issues. However, as compared to Option 1 (the route identified in the DEIS), Option 4B Modified would move the highway closer to the historic T.J. Houston House and Lovett Farm, and may affect areas with higher archaeological potential (pre-contact Native American sites). Nevertheless, the DE SHPO is open to further discussion of Option 4B Modified.

Thank you for your consideration of these comments. This office looks forward to working with FHWA and DelDOT on completing the assessment of effects, and developing the Memorandum of Agreement. It is the DE SHPO's understanding that consultation with Maryland's SHPO (the Maryland Historical Trust) is also ongoing. Please keep us apprised of these efforts.

Letter to R. Kleinburd
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If you have any questions at this time, please do not hesitate to contact Gwen Davis, who is conducting the review of this project, at (302) 736-7400.

Sincerely,


Joan N. Larrivee
Deputy State Historic Preservation Officer

cc: Edward Bonner, Philadelphia District, U.S. Army Corps of Engineers
Timothy Slavin, Director DCHA/State Historic Preservation Officer
Stephen Marz, Deputy Director, Division of Historical and Cultural Affairs
Robert Taylor, Assistant Director, Engineering Support, DelDOT
Therese M. Fulmer, Manager, Environmental Studies, DelDOT
Mark Tudor, Project Manager, Project Development North II, DelDOT
Michael C. Hahn, Senior Highway Planner, DelDOT
Gwenyth A. Davis, Archaeologist, SHPO, Division of Historical & Cultural Affairs
Robin Bodo, National Register Coordinator, SHPO, Division of Historical & Cultural Affairs
Christine Quinn, Preservation Planner, New Castle County Dept. of Land Use
Bill Hellmann, RK&K, Inc.
Helen German, RK&K, Inc.

State of Delaware
Historical and Cultural Affairs

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October 7, 2005

Mr. Robert Kleinburd
Division Program Manager
Federal Highway Administration
J. Allen Frear Federal Building
300 South New Street
Dover, DE 19904-6726

RE: US 301 Corridor Study – Alternatives

Dear Mr. Kleinburd:

At the resource agency meetings held this summer, DelDOT has sought comments on the Alternatives being considered for the US 301 Corridor project. With DelDOT's recent submittal of the revised impacts matrix, including information derived from the archaeological predictive model, this office now has sufficient information on which to base such comments. Since it is uncertain when the next resource agency meeting for this project will occur, this office is offering written comments for FHWA and DelDOT to consider as the analysis of the alternatives continues.

Please note that these comments are based primarily on the data contained in the revised impact matrix, received by this office on September 26, 2005. The architectural evaluation survey report, which conveys the consultant's specific recommendations on which resources are eligible for listing in the National Register of Historic Places, is still under review by this office. Also, this office has just received the revised archaeological predictive model report. The views expressed in this letter may be revised after this office completes its review of these reports.

The matrix identifies several categories of cultural resource issues. Of these, this office considers the following as the most critical categories:

- properties listed in or eligible for the National Register of Historic Places which may be physically affected (potential "4(f)" properties);
- properties listed in or eligible for the National Register of Historic Places which may be subject to visual or audible intrusions, significant changes of setting, or other such indirect adverse effects;

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RUMMEL, KLEPPER & KAHL, LLP



- surveyed properties (CRS) – including buildings and structures built prior to 1962, historic districts, objects, and known archaeological sites – which may be physically or indirectly affected;
- areas with High potential for Prehistoric and/or Historic period archaeological sites, as defined by the archaeological predictive model which may be physically affected; and
- cemeteries which may be physically or indirectly affected.

With the exception of “No Build”, all of the Alternatives presented to date are likely to adversely affect such known and potential historic properties. However, it is understood that DelDOT views the “No Build” alternative as not viable, as it would not meet the project’s “Purpose and Need” defined through the National Environmental Policy Act review process.

The “Build” Alternatives can be characterized by their relative degree and nature of potential effects to historic properties. This office views those alternatives which have overall fewer potential effects as “satisfactory” for the purposes of being carried forward for further analysis. From this perspective, specific comments on the Alternatives are given below.

Brown Alternatives (North and South):

In most of the critical cultural resource categories noted above, the Brown Alternatives have fewer potential impacts. This is particularly the case for above-ground resources and areas with historic archaeological potential. An exception is that the Brown routes have relatively high impacts to areas with prehistoric archaeological potential. Overall, this office views these alternatives as “satisfactory”, as defined above.

Green Alternatives (North and South)

When compared with the data on all of the other alternatives, the Green Alternatives generally fall in the middle of the range of potential effects on historic properties. Like the Brown Alternatives, the Green routes have relatively high impacts to areas with prehistoric archaeological potential. However, unlike the Brown routes, the Green Alternatives also pose relatively high potential effects on historic buildings. This office views these alternatives as “satisfactory”, as defined above, but recommends consideration of additional designs that would avoid or minimize the effects on historic buildings, in particular.

Yellow, Orange and Purple Alternatives:

The Yellow, Orange & Purple alternatives could have significant physical, visual, audible and other adverse effects on above-ground resources, including many that are already listed in the National Register of Historic Places. Yellow and Orange could affect two cemeteries, as well. Although these alternatives could have fewer impacts on areas with prehistoric archaeological potential, this office’s view of the Yellow, Orange and Purple alternatives is that they pose an unsatisfactory level of potential effects on historic properties. DelDOT has recommended that the Orange Alternative be dropped from further study; this office supports that recommendation.

Blue Alternatives (North and South):

Strictly by the data in DelDOT's matrix, the Blue Alternatives have fewer potential impacts in several critical cultural resource categories. However, as noted in the matrix, the cultural resource data for these Alternatives are incomplete. There are considerations beyond the numbers as well.

Because the projected routes would cross less intensively developed areas, the Blue Alternatives could significantly alter the setting of historic properties (potential historic landscapes). This office raised similar concerns about the "South Ridge" route in the first US 301 Corridor study. Subsequent development in that area has diminished such concerns.

Additionally, local concern about the Blue Alternatives will likely reopen the controversial issue of historic properties in "the Levels" area. As you may be aware, the initial study and nomination of the Levels Historic District was abandoned in 1985, at the request of land owners in the designated area who expressed this desire at a public hearing. However, this office recently received inquiries from an historic property owner concerned about the Blue routes' effects on the Levels area. Whether this reflects a general shift in the sentiment of area land owners is unknown. To date, DelDOT's consultants have not completed a re-evaluation of this area, so it is unclear if a viable district still remains here.

Although the information is not complete, this office believes the Blue Alternatives may pose an unsatisfactory level of potential effects on historic properties. DelDOT has recommended that these Alternatives be dropped from further study. This office does not object to that recommendation.

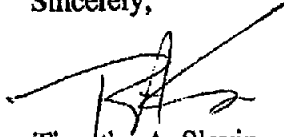
Red Alternative

This alternative is essentially DelDOT's preferred alternative from the previous US 301 Corridor study. At the time of the earlier study, this office viewed the section south of the C & D Canal as preferable to other alternatives considered, but viewed the section north of the Canal as less favorable than other alternatives considered. Concerns about the north section were due to potential effects on several National Register listed properties, including the Cooch's Bridge Historic District. The current matrix data for the Red Alternative are incomplete, but it appears that these conditions still exist in the north section, at least in part. Therefore, this office views the Red Alternative, north of the Canal, as posing an unsatisfactory level of potential effects on historic properties. DelDOT has recommended that the Red Alternative be dropped from further study; this office supports that recommendation.

Thank you for your consideration of these comments. This office looks forward to the continuing consultation on this project. Comments on the draft architectural survey report and revised archaeological predictive model will be provided to you presently. In the interim, if you have any questions, please do not hesitate to contact Gwen Davis, who is conducting the review of this project in consultation with the Division Director and Deputy Director.

Letter to R. Kleinburd
October 7, 2005
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Sincerely,

A handwritten signature in black ink, appearing to read 'T. Slavin', with a long horizontal stroke extending to the right.

Timothy A. Slavin
Director/State Historic Preservation Officer

cc: Edward Bonner, Philadelphia District, U.S. Army Corps of Engineers
Stephen Marz, Deputy Director, Division of Historical and Cultural Affairs
Robert Taylor, Assistant Director, Engineering Support, DelDOT
Therese M. Fulmer, Manager, Environmental Studies, DelDOT
Mark Tudor, Project Manager, Project Development North II, DelDOT
Michael C. Hahn, Senior Highway Planner, DelDOT
Gwenyth A. Davis, Archaeologist, SHPO, Division of Historical & Cultural Affairs
Robin Bodo, National Register Coordinator, SHPO, Division of Historical & Cultural Affairs
Stephanie Bruning, Preservation Planner, New Castle County Dept. of Land Use
Bill Hellmann, RK&K, Inc.
Katry Harris, RK&K, Inc.

**APPENDIX B:
CORRESPONDENCE WITH
MD SHPO**



*Maryland Department of Planning
Maryland Historical Trust*

*Martin O'Malley
Governor*

*Anthony G. Brown
Lt. Governor*

*Richard Eberhart Hall
Secretary*

*Matthew J. Power
Deputy Secretary*

June 29, 2007



Ms. Therese M. Fulmer
Delaware Department of Transportation
800 Bay Road
P.O. Box 778
Dover, DE 19903

Re: US 301 Project Development
Delaware/Maryland State Line to US 1
New Castle County, Delaware

Dear Ms. Fulmer:

Thank you for contacting the Maryland Historical Trust (Trust), a division of the Maryland Department of Planning, regarding the above-referenced undertaking. We are writing to offer our comments in accordance with Section 106 of the National Historic Preservation Act and the Maryland Historical Trust Act of 1985, as appropriate.

As noted in your letter, the project within Maryland involves the widening of existing US 301 to four lanes for a distance of 2600 feet. This work will occur within the existing US 301 right-of-way. Other ancillary activities, including the construction of storm water management facilities, may also occur within Maryland. Based upon our review of the project documentation, the Trust agrees that the Area of Potential Effects (APE) for the undertaking does not contain historic structures. In addition, it is the Trust's opinion that the proposed project area has been disturbed and has a low potential for containing National Register-eligible archeological resources that have not yet been identified. We agree with your assessment that no archeological investigations are warranted within Maryland. If ancillary activities are proposed outside of the existing right-of-way for US 301, additional coordination with the Trust will be necessary to determine the potential for impacts to unknown archeological resources. Therefore, we agree to participate in the execution of a Memorandum of Agreement (MOA) to assure future coordination of archeological investigations in Maryland.

We look forward to working with you to successfully complete the preservation requirements for the proposed undertaking. If you have questions or require assistance, please contact Beth Cole (regarding archeology) at bcole@mdp.state.md.us \ 410-514-7631 or me (regarding historic built environment) at ttamburrino@mdp.state.md.us \ 410-514-7637.

Sincerely,

Tim Tamburrino
Preservation Officer
Maryland Historical Trust

TJT/ 200701412

cc: Mr. Dan Johnson (FHWA)
Ms. Julie Schablitsky (SHA)

**APPENDIX C:
MEMORANDUM OF
AGREEMENT**

MEMORANDUM OF AGREEMENT

AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE DELAWARE STATE
HISTORIC PRESERVATION OFFICE, THE DELAWARE DEPARTMENT OF
TRANSPORTATION, AND THE MARYLAND STATE HISTORIC PRESERVATION
OFFICE

REGARDING IMPLEMENTATION OF THE U.S. 301 PROJECT FROM THE DELAWARE-
MARYLAND STATE LINE TO S.R. 1, ST. GEORGE'S HUNDRED AND PENCADER
HUNDRED NEW CASTLE COUNTY, DELAWARE

WHEREAS, the Federal Highway Administration (FHWA) with the Delaware Department of Transportation (DelDOT) propose to make the following improvements to U. S. 301 in St. George's Hundred and Pencader Hundred in New Castle County, Delaware: construct a four-lane, controlled access roadway and associated facilities (Exhibit A) from the Delaware-Maryland State Line to S.R. 1; and

WHEREAS, FHWA has selected the Green North Alternative plus a two lane spur road connecting to the southern terminus of Summit Bridge (Project) as the preferred alternative for the Project (see Exhibit A); and

WHEREAS, FHWA in consultation with the Delaware State Historic Preservation Office (DE SHPO) and DelDOT has established an initial Area of Potential Effect (APE) for the Project, as defined in 36 CFR Part 800.16(d) (Exhibit B); and

WHEREAS, FHWA has elected to phase the identification and evaluation of historic properties as provided in 36 CFR 800.4(b)(2) as stipulated under this agreement; and

WHEREAS, FHWA pursuant to 36 CFR Part 800.4(a)(2), has determined that within the APE in the State of Delaware the following properties are listed in the National Register of Historic Places:

The Maples, Cultural Resource Survey (CRS) No. N-106;
S. Holton Farm, CRS No. N-107;
Choptank, CRS No. N-109;
Rumsey Farm, CRS No. N-113;
Cochran Grange, CRS No. N-117;
Hedgelawn, CRS No. N-118;
Weston, CRS No. N-121;

Woodside, CRS No. N-427;
Achmester, CRS No. N-3930;
Idalia Manor, CRS No. N-3947;
Governor Benjamin T. Biggs Farm, CRS No. N-5123;
Armstrong-Walker House, CRS No. N-5146;
Rosedale, CRS No. N-5148; and
B.F Hanson House, CRS No. N-5225; and

WHEREAS, FHWA pursuant to 36 CFR Part 800.4(c), has determined that within the APE in the State of Delaware the following properties are eligible for listing in the National Register of Historic Places:

Summerton, CRS No. N-112;
T.J. Houston Farm, CRS No. N-5131;
Lovett Farm, CRS No. N-5132;
J. Houston House, CRS No. N-5195;
C. Polk House Estate, CRS No. N-5221;
Fairview, CRS No. N-5244;
State Bridge Number 383, CRS No. N-12636; and
Shahan Farm, CRS No. N-14388; and

WHEREAS, to date no historic properties have yet been identified in the APE in the State of Maryland; and

WHEREAS, FHWA in consultation with the DE SHPO has applied the criteria of adverse effect to historic properties; and

WHEREAS, FHWA has determined that the Project will have no effect on:

Cochran Grange, CRS No. N-117;
Weston, CRS No. N-121;
Woodside, CRS No. N-427;
Achmester, CRS No. N-3930;
Fairview, CRS No. CRS No. N-5244;
State Bridge Number 383, CRS No. N-12636; and
Shahan Farm, CRS No. N-14388; and

WHEREAS, FHWA has determined that the Project will have no adverse effect on:

Hedgelawn, CRS No. N-118;
Lovett Farm, CRS No. N-5132; and
J. Houston House, CRS No. N-5195; and

WHEREAS, FHWA has determined that the Project will have an adverse effect on:

The Maples, CRS No. N-106;
S. Holton Farm, CRS No. N-107;
Choptank, CRS No. N-109;
Rumsey Farm, CRS No. N-113;
Summerton, CRS No. N-112;
Idalia Manor, CRS No. N-3947;
Governor Benjamin T. Biggs Farm, CRS No. N-5123
T.J. Houston Farm, N-5131;
Armstrong-Walker House, CRS No. N-5146;
Rosedale, CRS No. N-5148;
C. Polk House, CRS No. N-5221; and
B.F. Hanson House, CRS No. N-5225; and

WHEREAS, FHWA has determined that the Project may also affect as yet unidentified historic properties in areas that have not been subject to prior cultural resource investigations, such as areas that are associated with proposed alignment modifications or other Project-related ancillary activities including, but not limited to, stormwater management facilities, wetland mitigation sites, staging, stockpiling and access areas, and disposal sites, and

WHEREAS, DelDOT participated in the consultation, has responsibilities for implementing stipulations under this MOA, and pursuant to 36 CFR 800.6(c)(2) has been invited to be a signatory to this MOA, and

WHEREAS, FHWA and DelDOT have consulted with the DE SHPO and the Maryland State Historic Preservation Office (MD SHPO) in accordance with Section 106 of the National Historic Preservation Act; 16 U.S.C. 470 (NHPA), and its implementing regulations (36 CFR Part 800) to resolve the effects of the Project on historic properties; and

WHEREAS, FHWA and DelDOT have notified the Advisory Council on Historic Preservation (Council) of the Project's adverse effect on historic properties and it declined to participate in the consultation, and

WHEREAS, FHWA has contacted the Delaware Nation, and the Stockbridge-Muncee Community; to date, neither Tribe has indicated its intent to participate in the consultation. However, FHWA will advise these Tribes of Native American archaeological sites, investigations, and treatments as provided for under the stipulations of this agreement, and

WHEREAS, FHWA has afforded the public an opportunity to comment on the effects of the Project on historic properties through the National Environmental Policy Act (NEPA) of 1969, as amended; and through DelDOT's Public Involvement Procedures.

NOW, THEREFORE, FHWA, DelDOT, DE SHPO, and MD SHPO agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties:

Stipulations

FHWA shall ensure that the following actions will be carried out:

I. Archaeological Resources

A. Identification/Evaluation

DelDOT in consultation with the DE SHPO and MD SHPO shall conduct identification (Phase I) archaeological surveys within the APE for the project, and will determine if identified sites will require a Phase II level archaeological survey to evaluate their National Register of Historic Places eligibility. Evaluation Studies (Phase II) may require additional background research and/or additional field excavations.

DelDOT shall prepare reports on findings of the archaeological identification/evaluation surveys and shall submit the reports to the DE SHPO and MD SHPO, as appropriate, for their review and concurrence. Upon receipt of the document, the review period will be thirty (30) days. FHWA and DelDOT will take into account comments and will recommend any next steps.

During the Evaluation Studies (Phase II), FHWA and DelDOT shall apply the National Register criteria (36 CFR 60.4) in accordance with 36 CFR 800.4 (c), taking into account applicable historic contexts and management plans developed for Delaware or Maryland's historic and prehistoric archaeological resources.

If FHWA and DelDOT determine that any of the National Register criteria are met, and the DE SHPO and/or the MD SHPO agrees, as applicable, the archaeological site(s) shall be considered eligible for the National Register.

If FHWA and DelDOT determine that the National Register criteria are not met, and the DE SHPO and/or the MD SHPO agrees, as applicable, the archaeological site(s) shall be considered not eligible for the National Register.

Based on the Evaluation Studies (Phase II), should a signatory to this agreement not agree on the eligibility determination of an archaeological site(s), the DelDOT or FHWA shall obtain a determination from the Secretary of the Interior, pursuant to 36 CFR 800.4(c)(2), 36 CFR 63.2(c) and 63.3(d).

B. Effect Determination/Mitigation

If eligible archaeological sites are identified and affected within the APE, DelDOT will make a reasonable effort to avoid these sites or to minimize impacts to them. If the eligible sites cannot be avoided, DelDOT will apply the Criteria of Adverse Effect in accordance with 36 CFR Part 800.5.

If the project will have an adverse effect on archaeological sites, DelDOT in consultation with the DE SHPO and/or MD SHPO, shall develop a treatment plan. The treatment plan may include elements of data recovery or an alternative mitigation plan.

DelDOT shall submit the treatment plan to the relevant SHPO and other consulting parties that may be identified, including Indian Tribes as defined in 36 CFR 800.16(m), for their review and comment. Upon receipt of the document, the review period will be thirty (30) days. Following 30 days, DelDOT will take into account any comments, and will recommend any next steps.

Should data recovery investigations be warranted, DelDOT shall ensure that a data recovery plan is developed in consultation with the relevant SHPO. The plan shall specify, at a minimum:

- the property, properties, or portions of properties where data recovery is to be carried out, and any property that will or may be destroyed without data recovery;
- research questions to be addressed through data recovery, with an explanation of their relevance and importance;
- the research methods to be used, with an explanation of their relevance to the research questions;
- the methods to be used in analysis, data management, and data dissemination, including a schedule;
- a provision for assessing materials that may be in need of conservation
- proposed disposition of recovered materials and records;
- proposed methods for involving the interested public in the data recovery, and for disseminating the results of the work to the interested public;

- a proposed schedule for the submission of progress reports to the relevant SHPO; and
- provisions to meet on-site in order to evaluate the success of the initial fieldwork phase of any data recovery program, and near the end of the fieldwork efforts to validate substantial completion.

When and/or if an alternative mitigation strategy is chosen and approved by the DE SHPO, MD SHPO, FHWA, and DelDOT, it may include but is not limited to: analysis and synthesis of past data accumulated through either SHPO, FHWA, and DelDOT projects, updating the relevant SHPO and DelDOT archaeological websites and GIS databases, development of historic and prehistoric contexts and preservation priorities, statewide predictive models, development of travel or informational displays with the cultural resource work for this Project, and improved archaeological data management and access for both SHPO and DelDOT.

DelDOT will complete all necessary data recovery field work prior to commencing construction in the site areas, alternative mitigation may or may not be completed prior to commencing construction in the site areas.

DelDOT shall provide all draft and final archaeological reports and public information materials to the appropriate SHPO for review and comment. All final reports shall meet the Secretary of the Interior's standards and Guidelines for Archaeological Documentation (48 FR 44734-37), while also satisfying the necessary SHPO's guidelines for archaeological surveys or investigations.

C. Public Outreach

If mitigation is necessary, DelDOT will prepare a public participation plan and public information materials. DelDOT shall submit the plan and materials to the FHWA, DE SHPO, MD SHPO, and other consulting parties that may be identified for their review and comment. Upon receipt of the materials, the review period will be thirty (30) days. Following 30 days, DelDOT will take into account any comments received, and will recommend any next steps.

The public participation plan may include, but is not limited to archaeological site tours for the public and educational groups. The specific public outreach materials produced will be determined individually for each site for which mitigation is necessary and may include, but are not limited to pamphlets, videos, historical markers, brochures, exhibits, displays for public buildings booklets on the history or prehistory of the project area, lectures and or presentations at academic conferences, and/or public institutions such as schools and historical societies.

DelDOT shall distribute the public information materials to consulting parties, local schools, historical societies, libraries, museums and/or other venues and individuals deemed pertinent in consultation with the DE SHPO, MD SHPO, and FHWA.

D. Discovery of and Treatment of Human Remains and Burials

In the State of Delaware, DelDOT shall immediately notify the DE SHPO of the discovery of any human remains encountered during the archaeological investigations or the project construction. DelDOT shall cease all activities that may disturb or damage the remains, and comply with the Delaware Unmarked Human Remains Act (7DE code Chapter 54).

In the State of Maryland, DelDOT shall follow the Maryland State burial law: Title 10 Subtitle 4 §§ 10-401 through 10-404 of the Annotated Code of Maryland. Upon discovery, DelDOT shall cease all activities that may disturb or damage the remains.

If the human remains are of Native American affiliation, then FHWA will determine an appropriate course of action, in accordance with 36 CFR 800, and the above cited state laws. The FHWA will include the DE SHPO and/or MD SHPO in such consultation. The DE SHPO or MD SHPO will comply with the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601) with regard to disposition of the remains and/or associated funerary objects, as applicable.

E. Curation

DelDOT shall ensure that all records and materials resulting from the archaeological investigations conducted for this undertaking in the State of Delaware are processed, prepared for, and curated in accordance with 36 CFR Part 79 and the Division of Historical & Cultural Affairs' (the Division) "Guidelines and Standards for the Curation of Archaeological Collections" (2001).

These records and materials shall be curated at the Division, or its designee, following the policies of the institution, except as may be provided for under the following paragraph.

As part of the Public Outreach efforts outlined in Stipulation I.C. of this Agreement, the FHWA, DelDOT and DE SHPO will consult to determine if any archaeological materials may be loaned to a public museum or other public institution for the purposes of exhibit or research, following the Division's loan policy and procedures. Such loans and exhibits may occur only after the curatorial procedures, referenced in the first paragraph in this stipulation, have been completed.

All materials and records resulting from cultural resources investigations conducted in the State of Maryland for the Project will be processed in accordance with the MD SHPO's *Revised Technical Update No. 1 of the Standards and Guidelines for Archeological Investigations in Maryland – Collections and Conservation Standards* (2005) and curated in accordance with 36 CFR 79 at the Maryland Archeological Conservation Laboratory, unless clear title or Deed of Gift to the collection cannot be obtained.

II. Historic Structures, Buildings, and Districts

The Project will adversely affect the following historic properties by introducing visual and/or audible elements that may produce a change in setting or feeling associated with the property:

The Maples, CRS No. N-106;
S. Holton Farm, CRS No. N-107;
Choptank, CRS No. N-109;
Rumsey Farm, CRS No. N-113;
Summerton, CRS No. N-112;
Idalia Manor, CRS No. N-3947;
Governor Benjamin T. Biggs Farm, CRS No. N-5123
T.J. Houston Farm, N-5131;
Armstrong-Walker House, CRS No. N-5146;
Rosedale, CRS No. N-5148;
C. Polk House, CRS No. N-5221; and
B.F. Hanson House, CRS No. N-5225; and

Should DelDOT, in consultation with the DE SHPO and MD SHPO, redefine the Area of Potential Effect beyond the areas depicted in Exhibit B of this MOA, DelDOT shall consult with the DE SHPO and MD SHPO to identify and evaluate historic buildings, structures, and/or districts in the newly affected areas, and assess the effects of the project thereon, following the process outlined for Archaeological Resources in Stipulations I.A. and I.B of this agreement, as applicable.

DelDOT shall seek ways to avoid or minimize adverse affects in the design of the Project, such as, but not limited to decreasing grades, creating cuts, or otherwise manipulating the elevation of the roadway and ramps, where deemed appropriate.

When adverse effects can not be avoided in the design, DelDOT shall develop in consultation with the FHWA, DE SHPO, and applicable properties owners, and other consulting parties as appropriate, mitigation for the adverse visual, audible, and setting impacts of the Project. This may include, but is not limited to, screening, earth berming, landscaping, fencing, or other appropriate barriers. Whenever practicable all screening or landscaping elements will be installed prior to actual construction activities.

To the degree practicable, FHWA and DelDOT will ensure that any mitigation elements installed are complementary to the surrounding environment and/or natural vegetation, without introducing additional visual effects that may be considered cumulative in nature.

In addition, as part of the public outreach efforts, DelDOT shall disseminate information on Delaware's architectural history in relationship to the Project and APE. These efforts may include, but are not limited to, pamphlets, guides, or other media that provide historical

information in the Project Area or describe National Register listed or eligible historic properties identified for the Project.

III. Disposal of Project Related Materials

DelDOT shall consult with the DE SHPO or the MD SHPO concerning the location for disposal of materials produced by any demolition, construction, excavation, and/or dredging. Upon the provision of adequate information, the DE SHPO or MD SHPO will have 30 days to review all such locations to ensure the disposal will not adversely affect historic properties. DelDOT shall not use any such locations if the DE SHPO or MD SHPO objects to proposed disposal sites.

IV. Review of Project Related Plans

DelDOT shall provide relevant sections of preliminary, semi-final, and final project plans to the DE SHPO, MD SHPO, and any other party deemed appropriate for review and comment. Upon circulation and assurance that relevant sections have been distributed, the DE SHPO, MD SHPO, and any other reviewing party will have 30 days to provide comments. DelDOT shall take into account any comments.

V. Subsequent Changes to the Project

A. If subsequent to the implementation of Stipulation IV, if DelDOT proposes any significant changes to the Project affecting location, design, methods of construction, materials, or relative footprint of the Project, DelDOT shall provide FHWA, DE SHPO, MD SHPO, and any other party deemed appropriate with information concerning the proposed changes. The DE SHPO, the MD SHPO, and any other party deemed appropriate will have 30 days from the receipt of this information to comment on the proposed changes. DelDOT shall take into account any comments, prior to implementing such changes.

VI. Administrative Stipulations

A. Personnel Qualifications

All cultural resource work carried out pursuant to this agreement will be by or under the direct supervision of a person or persons meeting at a minimum the "Secretary of the Interior's Standards and Guidelines" (http://www.cr.nps.gov/local-law/Arch_Standards.htm), formerly 61 CFR Appendix A.

DelDOT's Environmental Studies personnel will have direct authority to choose and authorize any qualified cultural resource management firms or subconsultant to carry out this work on an as-needed basis throughout the duration of the Project.

B. Survey and Data Recovery Standards

DelDOT shall ensure that all cultural resource surveys and data recovery plans conducted pursuant to this Agreement are done in accordance with the *Secretary of the Interior's Standards and Guidelines for Identification and Evaluation*, and for *Archaeological Documentation*, and in accordance with the DE SHPO's *Guidelines for Architectural and Archaeological Surveys in Delaware* (1993) or the MD SHPO's *Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole 1994), as applicable.

Survey proposals and data recovery plans shall include a research design that stipulates: objectives, methods, and expected results; production of draft and final reports; and preparation of materials for curation in accordance with Stipulation I.E., including budgeting for initial conservation assessments and treatment. Additional requirements for data recovery plans are found in Stipulation I.B. of this Agreement.

All data recovery plans shall also take into account the Advisory Council on Historic Preservation's guidance *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*, and reports will meet professional standards set forth by the Department of the Interior's "Format Standards for Final Reports of Data Recovery Program" (42 FR 5377-79).

All data recovery plans, public outreach, or future consultation shall also follow and/or consider any supplemental guidance and provisions provided by, but not limited to, the American Association of State Highway Transportation Officials, FHWA, Transportation Research Boards, National Park Service, Advisory Council on Historic Preservation or recognized academic journals or professional organizations as identified by DelDOT and/or the SHPOs.

DelDOT shall ensure that all draft and final cultural resource reports are provided to the FHWA and appropriate SHPO within two (2) years of the completion of fieldwork.

C. Late Discoveries

If any unanticipated discoveries of cultural resources are encountered during the implementation of this undertaking, DelDOT shall immediately suspend work in the area of the discovery, and FHWA shall comply with 36 CFR Part 800.13 by consulting with the DE SHPO or MD SHPO. The FHWA will notify the DE SHPO or MD SHPO within one working day of the discovery. The FHWA, DelDOT, and the DE SHPO or MD SHPO will meet at the location of the discovery

within forty-eight (48) hours of the initial notification to determine appropriate treatment of the discovery prior to resumption of construction activities within the area of discovery.

D. Amendments

Any party to this MOA may propose to FHWA that it be amended, whereupon FHWA shall consult with the other parties to this MOA to consider such an amendment. 36 CFR Part 800.6(c)(7) shall govern the execution of any such amendment.

E. Resolving Objections

1. Should any party to this MOA object in writing to FHWA regarding any action carried out or proposed with respect to the Project or implementation of this MOA, FHWA shall consult with the objecting party to resolve the objection. If after initiating such consultation FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the Council, including FHWA's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

- a. Advise FHWA that the Council concurs in FHWA's proposed response to the objection, whereupon FHWA shall respond to the objection accordingly;
- b. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
- c. Notify FHWA that it will comment pursuant to 36 CFR 800.7(a) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR 800.7(c)(4).

Should the Council not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume the Council's concurrence in its proposed response to the objection.

FHWA shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; FHWA's responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.

F. Resolution of Objections by the Public

At any time during implementation of the measures stipulated in this MOA, should any objection pertaining to any such measure or its manner of implementation be raised by a member of the public, FHWA shall notify the parties of this MOA and take the objection into account consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.

G. Review of Implementation

FHWA, DelDOT, DE SHPO and MD SHPO shall review the project annually, to monitor progress of the implementation of the terms of this MOA. This review should occur in January of each year following execution of the MOA.

H. Duration of the Agreement

This MOA shall be null and void if its terms are not carried out within six (6) years from the date of its execution. Within six months of the end of this period, the FHWA may request in writing that the signatories consider an extension of this MOA. Should all parties deem an extension to this MOA necessary, such extension shall be treated as an amendment under Stipulation VI.D. above. No extension or amendment will be effective unless all signatories to the MOA have agreed to it in writing.

I. Termination

1. If FHWA determines that it cannot implement the terms of this MOA, or the DE SHPO, or the MD SHPO determines that the MOA is not being properly implemented, FHWA, DelDOT, the DE SHPO, or the MD SHPO may propose to the other parties that this MOA be terminated.

2. The party proposing to terminate this MOA shall so notify all parties to this MOA, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.

3. Should such consultation fail, FHWA, DelDOT, DE SHPO, or the MD SHPO may terminate the MOA by so notifying all parties in writing.

4. Should this MOA be terminated, FHWA shall either:

a. Consult in accordance with 36 CFR Part 800.6(a)(1) to develop a new MOA; or

- b. Request the comments of the Council pursuant to 36 CFR Part 800.7(a)(1). The Council shall have forty-five (45) days to respond with comments.

5. FHWA and the Council may conclude the Section 106 process with an MOA between them if the DE SHPO and/or the MD SHPO terminates consultation in accordance with 36 CFR Part 800.7(a)(2).

Execution of this MOA by FHWA, DE SHPO, MD SHPO and DelDOT and the implementation of its terms, evidence that FHWA has taken into account the effects of the Project on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____
Robert Kleinburd

DELAWARE STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Timothy Slavin

MARYLAND STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
J. Rodney Little

DELAWARE DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Robert Taylor